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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JAN MONTES,

Defendant and Appellant.

A125922

(San Francisco City and County
Super. Ct. No. 2406327)

Counsel appointed for defendant Jan Montes has asked this court to independently examine the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436, to determine if there are any arguable issues that require briefing. Defendant was apprised of his right to file a supplemental brief, but he did not do so. We have conducted our review, conclude there are no arguable issues, and affirm.

Our examination¹ reveals that on February 13, 2009, San Francisco police officers were on foot patrol around the 200 block of Hyde Street, a well-known narcotics area. They observed defendant walking northbound on Hyde, looking in the officers' direction, and then hiding behind a truck. As the officers approached they saw defendant spit out numerous off-white rocks, which they recovered, and which were later determined to be 4.4 grams of cocaine base.

¹ Because defendant entered into a negotiated plea agreement prior to trial, we derive the factual background from the probation report, which references the information contained in San Francisco Police Department incident report no. 090162319. (Incident Report.)

On February 17, 2009, a complaint was filed charging defendant with possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) The complaint also alleged an on bail enhancement. (Pen. Code § 12022.1.)

On March 4, 2009, defendant, represented by counsel and having made an express oral waiver of rights, waived his right to a preliminary hearing, and plead guilty to the sole charge in the complaint. The court found that there was a factual basis for the plea based on the parties' stipulation to the Incident Report.

Pursuant to the plea agreement, imposition of sentence would be suspended, and defendant would receive three years probation, with credit for 42 days served. Also according to the plea, defendant would be released from custody that day on his own recognizance, with the further understanding that if he failed to obey all laws and the conditions of probation by the April 2, 2009 sentencing date, he would be subject to an additional six months in county jail. The on bail charge was dismissed with the understanding that it would be reinstated should the pleas be set aside for any reason. Sentencing was continued until April 2, 2009.

According to San Francisco Police report no. 090289355, on March 19, 2009, defendant was arrested on Turk and Hyde Streets with two clear plastic sacks containing 64 and 66 rocks of suspected rock cocaine and an unloaded .32 caliber black semi-automatic handgun.

On April 6, 2009, defendant's counsel filed a motion to withdraw the guilty plea, arguing that since defendant's subsequent arrest was for both narcotics and firearm possession, he should be allowed to withdraw the guilty plea and renegotiate his legal status. Defendant's counsel argued that the withdrawal was proper because the prosecutor was seeking a prison sentence on the new offense. The prosecutor responded that defendant had not shown the statutorily required good cause for withdrawing a guilty plea.

The motion to withdraw the plea came on for hearing on April 30, 2009. Defendant's counsel argued that it "made sense legally" to allow defendant to withdraw his plea, and that the prosecutor should have set the guilty plea aside. The prosecutor

disagreed, contending that “picking up a new case is not good grounds to dismiss the plea.” Following further argument, the trial court denied the motion.

Turning to the sentencing phase, imposition of sentence was suspended. Since defendant had been arrested for a new crime, the parties agreed, and the court concurred, that the appropriate sentence was six months in county jail plus 20 days with credit for 42 days served. Defendant agreed to the conditions of probation.

On May 4, 2009, defendant’s counsel filed a notice of appeal.

DISCUSSION

The scope of reviewable issues on appeal after a guilty plea is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 894-896.)

“When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court’s decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]” (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496; see also *People v. Holmes* (2004) 32 Cal.4th 432, 442-443; *People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.) Here, the trial court did not abuse its discretion in denying defendant’s motion to withdraw his plea.

Defendant was also represented by competent counsel who zealously guarded his rights and interests.

The sentence imposed is authorized by law.

Our independent review having found no arguable issues that require briefing, the judgment of conviction is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.